

Committee on Resources

Subcommittee on National Parks & Public Lands

Witness Statement

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for
The Committee on Resources
Subcommittee on National Parks and Public Lands
U.S. House of Representatives
Washington, D.C. 20515-6207
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Subject: Utah West Desert Land Exchange Act, H.R. 4579

Dear Committee Members:

We submit this letter to express our opposition to Utah West Desert Land Exchange Act, H.R. 4579. We strongly urge the Committee to reject this bill.

The Western Land Exchange Project is a non-profit, public interest-oriented organization that monitors land trades between the federal government and non-federal entities. Our mission is research, outreach and advocacy toward reform of the federal land exchange process. We work throughout the eleven western states, concentrating many of our efforts on helping citizens understand and involve themselves in these important decisions.

Our goal is to ensure that, where they may be appropriate, land exchanges serve the public interest and occur with the full knowledge and participation of American citizens, for whom public lands are held in trust.

As many of you know, the federal land exchange programs have come under increased scrutiny by the public, by the Inspectors General of the USDA and Department of the Interior, and by the General Accounting Office. Government and press investigations have exposed numerous problems with the policies and procedures under which land managers trade federal land. There is a heightened awareness among citizens of the fact that their public lands are being used as a commodity for trade. Increasingly, the public perception of land exchanges is that they are "backroom deals" driven and controlled by the non-federal proponents, and that neither public lands nor taxpayer interests are being sufficiently protected.

Legislated land trades represent the worst kind of land deal, because they are usually driven more by political expediency than by the public interest. Legislated exchanges effectively shut out public participation in decision making, circumvent environmental impact analysis and disclosure, and rob citizens of our right to understand and possibly challenge a land exchange that may be counter our interests.

There is no legal justification for enacting a land exchange through Congress except in the rare case that the lands at issue cross state lines. Yet, more and more exchanges are being ushered through Congress, bypassing the National Environmental Policy Act (NEPA) and even tailoring land appraisal procedures to benefit non-federal entities.

H.R. 4579 provides virtually no detail on the exchange, but as we understand it, the Utah West Desert Land Exchange would involve the trade of about 107,000 acres of federal land for about 106,000 acres of land held by the Utah School and Institutional Trust Lands Administration (SITLA).

SITLA would receive extremely valuable land in six counties including several thousand acres along I-80 and a parcel at the gateway to Zion National Park. Once passed to the State, the land would be developed to maximize revenue.

The public would receive isolated (and largely inaccessible) inholdings in a proposed wilderness area in Utah's West Desert, as well as other lands across seven Utah counties that, as SITLA states, "have not generated significant revenue to the school trust."

The purpose of the Act is essentially to "buy off" wilderness opponents in Utah. But in consolidating federal holdings in West Desert wilderness study areas and reducing political conflict, the federal government will also be handing the State a huge windfall.

The model for the current proposal was the 1998 Utah Schools Land Exchange (PL 105-335). Like the current exchange, it was based on an agreement between Utah Governor Leavitt and Secretary Babbitt, and it also involved trading federal land to SITLA. In our opinion, that land trade was not the "win-win" agreement it was cut out to be, but an expedited deal to mollify anti-federal, anti-environmental interests, to the detriment of the American public.

In all but the actual lands involved, the present proposal is a virtual carbon copy of the Utah Schools Exchange, posing the same questions regarding environmental impact, public process, and land valuations posed by the 1998 exchange.

No documentation of land values

Evidence points to the 1998 exchange having cost American taxpayers (and more significantly, public lands) much more than was let on. There were no formal appraisals or appraisal reviews used to determine the value of the federal and State lands that would be exchanged. In fact, appraisers in the BLM's Utah office-staff who had worked for years assessing values on these and other lands throughout Utah-were silenced when they pointed out the vast imbalance in the land values involved.

Sources within the BLM have said that the State lands traded to the public were probably worth about \$70 million, while the State has projected a value of a billion dollars for federal land it gained in the trade. The State received \$50 million in cash and future lease revenues as well.

Through the Freedom of Information Act (FOIA), the Western Land Exchange Project has attempted to obtain any appraisal information that may have been used as the basis for Congress' determination that the lands traded in the 1998 Utah Schools Exchange were of "approximately equal value," as stated in PL 105-335. So far, the BLM and the Department of Interior have replied that there are "no responsive records."

Press coverage- virtually the only conduit for meaningful information on the trade-suggested that the lands to be exchanged were decided upon through negotiation between the Governor's and the Secretary's staff, none of whom had particular knowledge of land values. Indeed, a manager in the BLM's national office told us that the fairness of the trade was based not on land values but on (unnamed) officials' "perceptions of what is in the public interest."

Our letters to Secretary Babbitt and his staff regarding these issues have gone unanswered.

The apparent inequality of the 1998 Utah Schools Exchange is a significant problem for those who care about taxpayer subsidies. It is certainly problematic for those of us who don't live in Utah but have a stake in how Utah's federal lands are managed-and undervalued when they are traded.

We believe that both the public and members of Congress were deceived by the "win-win" fanfare over the 1998 exchange, and silenced by the expediency with which it was enacted. We doubt that either Congress or the public at large would have sat by quietly, had they been aware of the huge difference in land values in the trade.

It appears that the West Desert exchange is another project that favors the State and shafts the public. We seriously question that this exchange of approximately equal acreage could possibly represent an equal-value trade, when the federal and State lands are so different-i.e., highly developable federal lands versus largely isolated and inaccessible State lands.

We have sent inquiries to the BLM and the Interior Department regarding the process by which land values would be determined for this exchange, and again, have received no information.

If the land values involved are as lopsided as they appear, this bill puts the American public at a gross disadvantage for the sake of "making peace" with anti-wilderness interests in Utah.

Circumvention of the National Environmental Policy Act (NEPA)

In the present proposal, there has been and will be no environmental analysis to inform the public of what we would truly get from this exchange, what we would trade to the State, and what the long-term effects would be of the trade. There will be no examination of alternatives, and no recourse for challenge by concerned citizens. It is fundamentally unfair to ask the American people to blindly enter into a land exchange, given no real information on what is at stake.

Whether or not it contains any "sufficiency" language, a land exchange bill constitutes a de facto waiver of the National Environmental Policy Act (NEPA). It mandates that an exchange must occur, leaving no room for the no-action alternative that would be analyzed under NEPA, or for anything other than the "preferred alternative" embodied in the bill.

Public input is extremely limited. Congress may argue that legislation occurs within the public arena. However, based on our experience, it is extremely difficult for the public to understand, follow, or act on a legislative land exchange proposal, because so little substantive information is provided. In circumstances like the present, where the bill incorporates by reference an agreement that is not available to the public, it is doubly difficult for citizens to offer meaningful input.

NEPA is one of the only laws we have that allow us all to directly participate in decision making. In

contrast, legislated land trades circumvent our rights under NEPA to examine, comment, participate, and possibly challenge an action. Congressional land exchanges essentially bypass the democratic process.

Many land trades are now brought to Congress specifically to circumvent the NEPA process, because it is unpredictable and often ridden with conflict. But in our view, the public involvement, conflict, and unpredictability inherent in the NEPA process represent the democratic process far better than fast-track, secretive, legislative "solutions" such as the current proposal.

The Western Land Exchange Project recognizes as clearly as anyone the flaws in the administrative (agency) land exchange process, and we have advocated loudly for reform of the agencies' policies and procedures. However, one positive aspect of administrative land exchanges (and the associated NEPA process) is that it makes room for progressive improvement and refinement of land exchange implementation.

For example, a recent decision by the Ninth Circuit Court of Appeals (*Muckleshoot Indian Tribe v. US Forest Service*) concluded that under NEPA the land management agencies must analyze non-exchange alternatives for acquiring desirable lands and must also fully analyze the cumulative impact of trading land out of public ownership.

If the Utah West Desert Land Exchange were implemented through the NEPA process, it would allow the public and decision makers to evaluate the impact of trading public lands to SITLA-which are likely, once traded, to be developed as sprawling subdivisions, golf courses, strip malls, and for extractive industries.

It would also require an analysis of the public interest in acquiring the SITLA lands, including an assessment of which lands may actually be threatened by development in the foreseeable future.

Conclusion

In any exchange between the State of Utah (or any other entity) and the federal government, the public deserves to know that our interests are being protected.

Land exchanges must be based on appraisals, not wink-and nod agreements; fairness, not political expediency; public process instead of backroom deals; environmental analysis, rather than hollow assurances about the "public interest"; and the protection of our rights as citizens to challenge projects that are counter to our well-being and that of our public lands.

Bills such as the Utah School Trust Lands Exchange will only blaze a trail to more blind deals. American citizens and public lands deserve better than this.

Again, we respectfully urge the Committee to reject this legislation.

Thank you for your consideration.

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